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 Defendant Largan Precision Co., Ltd.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

LARGAN PRECISION CO., LTD.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO.,
 LTD.; SAMSUNG ELECTRONICS
 AMERICA, INC.; and SAMSUNG
 TELECOMMUNICATIONS
 AMERICA, LLC,

Defendants.

SAMSUNG ELECTRONICS CO.,
 LTD.; SAMSUNG ELECTRONICS
 AMERICA, INC.; and SAMSUNG
 TELECOMMUNICATIONS
 AMERICA, LLC,

Counterclaim Plaintiffs,

v.

LARGAN PRECISION CO., LTD.,

Counterclaim Defendant.

Case No. 13-CV-2740 DMS (NLS)

**LARGAN PRECISION CO., LTD.'S
 EX PARTE APPLICATION TO
 MODIFY SCHEDULING ORDER
 [Redacted]**

JURY TRIAL DEMANDED

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Pursuant to this District's Civil Local Rule 72.1(b) and the Civil Case Procedures of the Honorable Nita L. Stormes, Largan respectfully submits this *Ex Parte* Application to Modify Scheduling Order.

I. INTRODUCTION

Although Largan served its first set of discovery requests in May 2014, it was only in late February 2015—more than half a year later and only two months before the close of fact discovery under the current Scheduling Order—that Samsung finally identified additional accused products, components, and witnesses with relevant knowledge of these products and components. Neither are Samsung's most recent discovery responses complete. Based on Largan's own investigation, Samsung still has not identified all Samsung products using 3-element and 5-element lenses, which are within the scope of Largan's discovery requests and implicated in the instant litigation.

In light of Samsung's delay in providing relevant discovery, Largan sought an agreement from Samsung for a 30 to 60-day extension of a limited number of deadlines in the current procedural schedule. Specifically, Largan sought to extend the deadlines as set forth below:

	Current Deadline	Proposed Deadline
Close of Fact Discovery	April 23, 2015	June 26, 2015
Opening Expert Reports	May 21, 2015	July 10, 2015
Supplemental Expert Reports	June 18, 2015	July 31, 2015
Close of Expert Discovery	July 16, 2015	August 14, 2015
Motions Deadline (except MILs)	July 30, 2015	August 28, 2015

Samsung has indicated that it opposes the proposed modification, necessitating the instant application.

The parties have not previously requested any continuances of the dates set forth in the Scheduling Order. Similarly, as discussed in greater detail below, good cause exists for the requested modifications: Although Largan worked with

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1 Samsung and the Court to create a workable Rule 16 order in May 2014 and has
2 diligently conducted discovery since that time, Largan could not have foreseen
3 Samsung's dilatory disclosure of highly relevant information at the time of the Rule
4 16 conference. Neither would the proposed modification of the current schedule
5 result in prejudice or undue delay. In particular, the proposed schedule should not
6 affect the remaining dates in the current Scheduling Order, including the trial
7 currently set for January 4, 2016. Thus, Largan respectfully requests that the Court
8 grants Largan's application.

9 **II. STATEMENT OF MATERIAL FACTS**

10 On May 5, 2014, the Court issued its Case Management Scheduling Order,
11 setting a deadline for close of fact discovery for April 23, 2015. (D.I. 35.) Less
12 than two weeks after the Court issued its Scheduling Order, Largan served its first
13 set of discovery, seeking production of documents relating to accused lenses,
14 accused camera modules, and accused Samsung products. (Ex. 1.¹) Although
15 Samsung agreed that other products using lenses incorporated in the Samsung
16 Galaxy S II, S III, S4, S4 mini, Note, Note II, and/or Gear were accused (Ex. 2),
17 Samsung produced discovery only with respect to those 7 products. Even as to the
18 specific lenses used in Samsung Galaxy S II, S III, S4, S4 mini, Note, Note II, and
19 Gear, moreover, Samsung claimed that it did not have possession, custody, or
20 control of the lens design files, which are design documents containing most if not
21 all of the information necessary to prove infringement. (*Id.* at 6.)

22 For the next seven months, Samsung insisted that no other Samsung products
23 used the lenses incorporated in these 7 products and that it had no possession,
24 custody, or control over lens design files in the ordinary course of its business. For
25 instance, in its October 2014 response to Largan's Second Set of Interrogatories,
26 which sought to confirm (1) identities of accused Samsung products, (2) the lenses

27 _____
28 ¹ All exhibits referenced herein refer to exhibits to the Declaration of Tawen Chang
in Support of Largan's *Ex Parte* Application to Modify Scheduling Order.

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1 and camera modules used in these products, and (3) third party component vendors
2 of these camera and lens modules, [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED] (Ex. 3 at 3-4.) Samsung also refused to properly identify its third
6 party lens module vendors as required by Largan's interrogatories. (*Id.* at 5.)

7 On December 12, 2014, Samsung finally supplemented its interrogatory
8 responses to identify [REDACTED]
9 [REDACTED]. (Ex.
10 4 at 7.) On that date, Samsung also finally produced some of the samples of the
11 accused camera and lens modules requested by Largan in its September 9, 2014
12 Request for Production No. 15. (Ex. 5.) Nevertheless, Samsung continued to claim
13 that it had no possession, custody, or control over lens design files for these lenses,
14 stating:

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 (Ex. 4 at 8.)

21 On or around January 12, 2015, Largan's independent investigation showed
22 that Samsung had not, in fact, [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]. (Ex. 6.)

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1 Only after Largan independently showed the incompleteness of Samsung's
2 interrogatory responses did Samsung supplement its responses on January 23, 2015,

3 [REDACTED]. (Ex. 7 at 5-6.) [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] (*Id.* at 10-11)

10 On February 9, 2015, less than a month before the deadline for substantial
11 completion of document discovery and in the midst of Largan's deposition of
12 Samsung's 30(b)(1) witnesses [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] (Ex. 8.) Although Largan immediately

18 requested Samsung to supplement its discovery responses, including its

19 interrogatory responses, to provide information regarding the newly identified

20 products and accused camera modules (Ex. 9), it was not until February 27, 2015,

21 almost full three weeks later and after the deadline for substantial completion of

22 document discovery, that Samsung supplemented its interrogatory responses [REDACTED]

23 [REDACTED] and further identified additional individuals

24
25
26 ² Samsung originally identified [REDACTED], but based on
27 Samsung's subse [REDACTED]

28 [REDACTED].

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1 who had relevant information relating to the newly identified accused products.³
2 (Ex. 10.) Neither did Samsung produce documents relevant to these products until
3 after the deposition of Samsung witnesses Daesung Ha and Byungwook Lee,
4 [REDACTED]
5 [REDACTED]. In fact, to date it does
6 not appear that Samsung has produced all of the samples of the newly identified
7 accused products and modules—Samsung produced a sample of the [REDACTED]
8 [REDACTED] only last week. (Ex. 11.)

9 Given Samsung's substantial and belated disclosures regarding accused
10 products and camera and lens modules, which Largan believes remain incomplete,
11 Largan sought agreement from Samsung on Feb. 18 for a stipulated motion to
12 extend certain fact and expert discovery dates in the current schedule. (Ex. 12.)
13 The parties further discussed the proposed stipulated motion on Feb. 20 during a
14 telephonic meet and confer. (Ex. 13.) On or around February 27, Samsung
15 informed Largan it would not agree to a stipulated motion and would oppose
16 Largan's motion to modify schedule because Samsung "does not agree that the
17 discovery/expert schedule needs to be modified." (*Id.*). On March 16, Largan
18 further informed Samsung that it planned to file the instant *ex parte* application
19 shortly. (*Id.*)

20 **III. LEGAL STANDARD**

21 Dates set forth in a Rule 16 scheduling order may be modified "for good
22 cause and with the judge's consent." Fed.R.Civ.P. 16(b)(4); Fed.R.Civ.P. 6(b)(1).
23 Good cause exists if the moving party can show that the schedule cannot reasonably
24 be met despite the diligence of the party seeking the extension. *See, e.g., Wilson v.*
25

26 ³ [REDACTED]
27 [REDACTED]
28 [REDACTED]

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Davis, 2012 WL 3809125, *3, No. 10-cv-2669 (S.D. Cal. Sept. 4, 2012). The decision to modify a scheduling order is within the broad discretion of the court. *Benchmark Young Adult School, Inc. v. Launchworks Life Servs., LLC*, 2014 WL 3014720, *3, No. 12-cv-02953 (S.D. Cal., July 3, 2014). “[G]ood cause’ is a ‘non-rigorous standard,’ and requests for continuance of deadlines should be ‘granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.’” *Hibler v. BCI Coco-Cola Bottling Co.*, 2011 WL 4102224, Case No. 11-CV-298, *1 (S.D. Cal. September 14, 2011) (quoting *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir.2010)).

IV. ARGUMENTS

A. Good Cause Exists to Extend Discovery and Motions Deadlines in the Scheduling Order

Largan has demonstrated good cause exists for the requested modification of the schedule. As an initial matter, Largan was diligent in assisting the court in creating a workable Rule 16 order in May, including submitting a Joint Discovery Plan. (Ex. 14.) However, in light of matters which could not have been reasonably foreseen or anticipated at the time of the Rule 16 scheduling conference, particularly Samsung’s delay in providing complete and accurate responses to Largan’s discovery requests, the current fact and expert discovery deadlines are no longer workable despite Largan’s diligent efforts to comply with the current schedule.⁴

⁴ See, e.g., *Henderson v. United Student Aid Funds, Inc.*, 2014 WL 4658744, *5, No. 13-cv-1845 (S.D. Cal., Sept. 17, 2014) (inability to comply with the deadline to amend complaint could not have been reasonably foreseen at the time of the Rule 16 conference because it was at least partially attributable to defendant’s failure to produce requested information until after the deadline); *Becerra v. National Recovery Solutions, LLC*, 2014 WL 3700210, *3-4, No. 13-cv-1547 (S.D. Cal., July 24, 2014) (finding good cause to modify deadline for amendment of complaint where non-compliance with deadline resulted from defendant’s delay in producing discovery); *Benchmark Young Adult School, Inc.*, 2014 WL 3014720 at *3 (finding good cause to permit amendment of complaint after deadline where plaintiff did not see and/or understand facts relevant to amendment of complaint until after deposition of defendant employee).

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First, given that Samsung has [REDACTED] [REDACTED] and identified additional relevant witnesses and lens modules less than two months before the close of fact discovery, Largan must review information relating to these newly identified products and components before taking the remaining depositions of Samsung and its employees, as well as determine whether additional third party discovery is necessary.⁵ The below chart illustrates the dramatic difference between Samsung's earlier discovery responses and its latest disclosures:

	Oct. 14, 2014 and earlier	December 12, 2014	January 23, 2015	February 27, 2015
Identified Products	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Identified Camera Modules	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

⁵ Largan has served subpoenas on the following Samsung component vendors and their U.S. affiliates: SEMCO, SEM [REDACTED] ica. [REDACTED] exception of a single page [REDACTED], none of these vendors has [REDACTED] e to the [REDACTED] ents at issue in this case.

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16				
17	Identified			
18	Lens			
19	Modules⁶			
20				
21				
22	Identified			
23	Lens			
24	Module			
25	Vendors			

⁶

to the extent, Largan would still need additional time to review and analyze any documents relating to any newly identified lenses.

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1
2 Second, [REDACTED], Largan strongly
3 suspects that Samsung has control over additional highly relevant documents,
4 particularly lens design files, that Samsung has not yet produced to Largan despite
5 the rapid approach of the close of fact discovery under the current Scheduling Order.
6 In particular, Samsung has claimed steadfastly that it has no control over lens
7 design files for the lenses at issue in this litigation, even though Samsung admitted
8 in its interrogatory responses that [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED].
12 (Ex. 4 at 8.) Samsung's claim of lack of control over the lens design files was
13 barely plausible when Samsung claimed, [REDACTED]
14 [REDACTED]. (*Id.* at 7).
15 Samsung's continued claim of lack of control, however, is no longer plausible in
16 light of [REDACTED]
17 [REDACTED]
18 [REDACTED]. (Ex. 10 at 13-14; Ex. 15 at 88:5-22.) In light of such new
19 information, Largan requires additional time to investigate Samsung's alleged lack
20 of control and to obtain these highly relevant documents from Samsung, including
21 seeking the assistance of the Court to the extent necessary, as well as to analyze
22 them for purposes of further fact and expert discovery.

23 Third, although Samsung's dilatory disclosure described above already
24 provides sufficient good cause for the requested modification of the case schedule,
25 based on Largan's own investigation, Samsung has not identified all of the products
26 and components relevant to the instant litigation even now. As will be described in
27 greater detail in the parties' Joint Motion for Determination of Discovery Dispute,
28 to be filed by March 19, 2015, Largan has sought information relating to all

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1 Samsung products incorporating 3-element and 5-element lenses. (*See, e.g.*, Ex. 16.)
2 Indeed, the Court has previously found these products to be reasonably similar to
3 the products expressly identified in Largan's infringement contentions and thus
4 within the scope of proper discovery so long as the products are to be announced
5 prior to the close of discovery in this case. (D.I. 83). To date, Samsung has agreed
6 to produce information relating only to the [REDACTED] products identified in its third
7 supplemental response to Largan's Second Set of Interrogatories. However,
8 Largan's own investigation shows that additional Samsung products, including for
9 instance the Galaxy Note 4 and the Galaxy Edge, contain 5-element lenses and are
10 thus within the scope of Largan's requests and the proper scope of discovery of this
11 case. The requested extension of the dates of the current Scheduling Order will
12 permit Largan to conduct discovery into these and other products Samsung has
13 failed to disclose and to seek the assistance of the Court to resolve any disputes
14 with Samsung relating to the discovery of these products. In particular, to the
15 extent products Samsung has failed to disclose thus far require further reverse
16 engineering of lenses by Largan, at least the requested two-month extension would
17 be necessary because such reverse engineering will require significant amount of
18 both time and resources from Largan. *See* Declaration of Chia-Wen Lee in Support
19 of Largan's *Ex Parte* Application to Modify Scheduling Order ("Lee Decl."), ¶¶ 4-6.

20 Finally, Largan has been diligent in seeking the extension of discovery once
21 it became apparent that the current schedule is no longer workable and that
22 Samsung would not agree to a stipulated motion to extend. Largan reached out to
23 Samsung to seek a stipulated motion to modify the schedule shortly after
24 Samsung's belated disclosure of accused products and components. (Ex. 13.)
25 Similarly, Largan filed the instant motion less than three weeks after Samsung
26 served its supplemental interrogatory responses identifying new accused products
27 and components and after Samsung refused to stipulate to an extension, and more
28 than a month before the close of fact discovery under the current schedule.

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B. Defendants Will not Be Prejudiced by the Extension

Because Largan has shown good cause for the requested modification of the schedule, the requested modification of the schedule should be granted. *See, e.g., Wilson*, 2012 WL 3809125 at *3 (“Because Plaintiff satisfied his burden and established good cause for the additional discovery, the Court need not consider the prejudice to Defendants in allowing the opposed discovery.”). In any event, the requested modification will not prejudice Samsung. During the parties’ initial discussion regarding the scheduling of this case, Samsung proposed fact discovery cutoff, initial expert report, rebuttal expert report, close of expert discovery, and motion deadline dates of 180, 210, 240, 270, and 300 days after Claim Construction Order respectively, which would have fallen around June, July, August, September, and October 2015. (*See* Ex. 14 at 8-9.) These dates would have been approximately the same or later than the dates that Largan is seeking with this motion. Furthermore, Largan’s proposed modifications will not impact the trial date, which is set for January 2016, or other dates in the current Scheduling Order.

For all of the above reasons, Largan respectfully requests that the Court grants Largan’s application and modify the schedule.

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1 DATED: March 19, 2015

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on March 19, 2015 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system. Any other counsel of record will be served by electronic mail.

/s/ Tawen Chang
Tawen Chang

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